

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JEREMY K. MCDONALD,

Plaintiff,

v.

**Case No.: 2:18-cv-622
JUDGE GEORGE C. SMITH
Magistrate Judge Jolson**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER

This case is before the Court to consider the *Report and Recommendation* issued by the Magistrate Judge on May 20, 2019. The Magistrate Judge recommended that Plaintiff's Statement of Errors be overruled and the decision of the Commissioner of Social Security be affirmed. (*See Report and Recommendation*, Doc. 13). This matter is now before the Court on Plaintiff's Objection to the Magistrate Judge's *Report and Recommendation*. (Doc. 14). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff raises three objections to the Magistrate Judge's Report and Recommendation: (1) that the ALJ failed to take reasonable steps to obtain Dr. Doss' medical records; (2) that the ALJ failed to properly evaluate the opinions of Dr. Rowland; and (3) that the ALJ's decision should be reversed because the ALJ failed to properly determine whether or not Plaintiff's can was medically necessary.

Plaintiff's objection presents the same issue already presented to, and carefully considered by, the Magistrate Judge in the *Report and Recommendation*. Plaintiff has not

presented any new evidence or argument other than what was previously presented in his Statement of Errors. Plaintiff merely disagrees with the ALJ and Magistrate Judge's conclusions.

Specifically with respect to Dr. Doss' medical records, the ALJ issued a subpoena and Dr. Doss did not comply. Plaintiff asserts that the mere fact that the ALJ issued the subpoena proves that those records were necessary and should be part of the record. The ALJ and the Magistrate Judge, however, found that the record was complete without those records. The Court agrees. This is not the case where there are no records or information from the treating physician. There were some records from Dr. Doss and the ALJ noted that there was no evidence that Dr. Doss had routine, regular treatment notes. Accordingly, the Court does not find any error with respect to Plaintiff's first objection.

Next, with respect to Dr. Rowland's opinion, the Magistrate Judge found, and the Court agrees, that the ALJ properly evaluated Dr. Rowland's opinion. Again, Plaintiff disagrees with the ALJ's decision and partial weight given to Dr. Rowland's opinion. But, there is no evidence that the ALJ or Magistrate Judge erred. Accordingly, the second objection is overruled.

The final issue for consideration is whether the ALJ properly considered whether Plaintiff's cane was medically necessary. Both the ALJ and the Magistrate Judge cited portions of the record where Plaintiff and treating physicians gave conflicting testimony as to whether the cane was medically necessary. The Court also notes the conflicting testimony, but finds that the ALJ sufficiently considered all of the testimony and found that after Plaintiff's initial recovery, the use of the cane was no longer necessary. Therefore, the ALJ and Magistrate Judge

sufficiently considered the testimony and did not err in their conclusions. Accordingly, the final objection is overruled.

The Court has carefully considered Plaintiff's objections, but finds that the decision of the ALJ was supported by substantial evidence as acknowledged in detail in the Magistrate Judge's *Report and Recommendation*. Therefore, for the reasons stated in the well-reasoned *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit.

Based on the aforementioned and the detailed *Report and Recommendation*, the Court finds that Plaintiff's objections have been thoroughly considered and are hereby **OVERRULED**. Accordingly, the *Report and Recommendation*, Document 13, is **ADOPTED** and **AFFIRMED**. Plaintiff's Statement of Errors is hereby **OVERRULED**, and the decision of the Commissioner of Social Security is **AFFIRMED**.

The Clerk shall remove Documents 13 and 14 from the Court's pending motions list, and enter final judgment in favor of Defendant, the Commissioner of Social Security.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT